

## STATE OF DELAWARE THE COURTS OF THE JUSTICES OF THE PEACE

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## LEGAL MEMORANDUM NO. 91-187

TO: ALL JUSTICES OF THE PEACE, STATE OF DELAWARE

ALL CLERKS OF THE COURT, JUSTICE OF THE PEACE COURTS

FROM: WILLIAM F. RICHARDSON

CHIEF MAGISTRATE

DATE: AUGUST 19, 1991

CHIEF MAGISTRATE

RE: ARREST WITHOUT WARRANT: BOATING SAFETY LAWS

AND REGULATIONS

23 <u>Del. C.</u> Chapter 21 has been amended by House Bill No. 156, signed by Governor Castle on June 28, 1991. This legislation authorizes Fish and Wildlife agents, as well as police officers, to arrest a defendant without a warrant at the scene of a boating accident when the officers have reasonable and probable cause to believe that the defendant has committed a violation of Title 23 or any of the regulations promulgated thereunder. The probable cause must be determined through the officer's personal investigation but may be based in part upon eye-witness information. 23 <u>Del. C.</u> §2126 (a).

The act also authorizes arrests without a warrant in boating safety cases where the defendant has voluntarily left the scene or is removed from the scene of a boating accident for the purpose of receiving medical attention. In this regard, the

statute provides that the medical facility to which a defendant has been removed shall be considered an extension of the accident scene.

Finally, this legislation authorizes the arrest of a defendant without a warrant where the suspect was initially detained by an active duty member of the U. S. Coast Guard based upon reasonable and probable cause that the defendant had been operating a vessel while under the influence of alcohol or drugs. The elements of a Fish and Wildlife agent's or police officer's probable cause to arrest may include any information obtained from the active duty member of the U. S. Coast Guard who initially detained the defendant.

## WFR:jp

cc: The Honorable Andrew D. Christie The Honorable William T. Allen The Honorable Henry duPont Ridgely The Honorable Robert H. Wahl The Honorable Robert D. Thompson The Honorable Alfred R. Fraczkowski The Honorable Thomas B. Ferry The Honorable Charles M. Oberly, III Lawrence M. Sullivan, Esq. Eugene M. Hall, Esq. Keith Brady, Esq. Thomas W. Nagle Edward G. Pollard Anna A. Lewis Law Libraries: New Castle, Kent, and Sussex Counties FILE LM91-187/doc